

REMARKS

Favorable reconsideration is respectfully requested in view of the foregoing amendments and the following remarks.

I. EXAMINER INTERVIEW

Applicants thank Examiner Bunner for the helpful telephone discussions and interview held June 4, 2007. During the interview, it was suggested that claim 2 be amended to replace the hybridization language with "95% homology" language and functional language, and that claims 8-9 and 20 be cancelled.

Kindly note the claims have been amended along the lines suggested in the interview.

II. CLAIM STATUS AND AMENDMENTS

In items 4 and 6 on page 1 of the Office Action, it was incorrectly indicated that claims 1-20 were pending. Instead, claims 1-3 and 5-20 were pending in this application when last examined. Claims 1-3, 7-9, 17 and 18 were examined on the merits, and claims 2, 3, 7-9, 17, 18 and 20 were rejected. Claims 5, 6, 10-16 and 19 were withdrawn as non-elected subject matter.

In item 5 on page 1 and at the top of page 12, it was indicated that claim 1 is allowable. Applicants thank Examiner Bunner for the indication of allowable subject matter.

Claims 8-9 and 20 have been canceled without prejudice or disclaimer thereto. Applicants reserve the right to file a continuation or divisional application on any canceled subject matter.

Claim 2 has been amended to replace the hybridization language with the "at least 95% homology" language of claim 20 and functional language as suggested during the interview. Support can be found in the disclosure at page 36, lines 11-18 and previous claim 20.

It is respectfully submitted that the amendment should be entered and considered, because amended claim 2 will not require a new search and/or further consideration. In this regard, claim

2 was amended, along the lines suggested in the interview, to incorporate the subject matter of claim 20, which was previously examined.

No new matter has been added.

Claims 1-3, 5-7 and 10-19 are pending upon entry of this amendment.

III. ANTICIPATION REJECTION

In item 3 on pages 2-4 of the Office Action, claims 2-3, 7 and 17-18 were again rejected under 35 U.S.C. § 102(b) as anticipated by Bell (US 5,436,155).

The Office maintained the rejection on the basis that claim 2 lacks a recitation of the washing conditions, and whereby claim 2 has been interpreted to encompass an infinite number of polynucleotides which may hybridize to the nucleotide sequence of SEQ ID NO:6, including the nucleic acid molecule of Bell (which is 14.6% identical to SEQ ID NO:6).

It is respectfully submitted that the present amendment overcomes this rejection.

For the sole purpose of expediting prosecution and not to acquiesce to the rejection, independent claim 2 has been amended to replace the hybridization language with the “at least 95% homology” language of claim 20 and functional language as suggested in the interview. Accordingly, claim 2 now includes the subject matter of claim 20, which was not included in this rejection.

Therefore, the rejection of claims 2-3, 7 and 17-18 under 35 U.S.C. § 102(b) is untenable and should be withdrawn.

IV. ENABLEMENT & WRITTEN DESCRIPTION REJECTIONS

Claims 2-3, 7-9, 17-18 and 20 were again rejected under 35 U.S.C. § 112, first paragraph, on the basis that the Specification lacks enablement for how to make and use the claimed invention due to the hybridization language for the reasons set forth in item 4 on pages 4-9 of the Action.

In item 5 on pages 9-11 of the Action, claims 2-3, 7-9, 17-18 and 20 were again rejected under 35 U.S.C. § 112, first paragraph, on the basis that the Specification lacks written description support for the genus of claimed polynucleotides due to the lack a recitation of a washing under stringent conditions.

For the sole purpose of expediting prosecution and not to acquiesce to the rejections, independent claim 2 has been amended to replace the hybridization language with the "at least 95% homology" language and to include functional language, as suggested in the interview. Also, claims 8 and 9 have been cancelled without prejudice or disclaimer thereto. It is respectfully submitted that the present amendment overcomes these rejections.

Therefore, the above-noted enablement and written description rejections of claims 2-3, 7-9, 17-18 and 20 under 35 U.S.C. § 112, first paragraph, are untenable and should be withdrawn.


CONCLUSION

In view of the foregoing amendments and remarks, it is respectfully submitted that the present application is in condition for allowance and early notice to that effect is hereby requested.

If the Examiner has any comments or proposals for expediting prosecution, please contact the undersigned attorney at the telephone number below.

Respectfully submitted,

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